## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

IRVING BERRY,	)	
Plaintiff,	)	
V.	) No. 4:21-CV-00903 A	GF
STEVE PFISTER, et al.,	)	
Defendants.	)	

## MEMORANDUM AND ORDER

This closed case is before the court on self-represented plaintiff Irving Berry's notice of appeal and motion for leave to proceed *in forma pauperis* on appeal. For the reasons discussed below, plaintiff's motion to proceed *in forma pauperis* will be denied.

"The filing of a notice of appeal ... confers jurisdiction on the court of appeals and divests the district court o[f] its control over those aspects of the case involved in the appeal." *Liddell v. Bd. of Educ.*, 73 F.3d 819, 822 (8th Cir. 1996) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). But filing a notice of appeal does not prevent a district court from taking action in furtherance of the appeal or prevent it from hearing motions on collateral matters to those at issue on appeal. *Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003) (citations omitted).

On February 23, 2022, the Court dismissed this case for failure to state a claim upon which relief may be granted. When the Court dismissed this action, it certified in writing that an appeal from the dismissal would not be taken in good faith. *See id.*; 28 U.S.C. § 1915A. As a result, plaintiff's motion for leave to proceed *in forma pauperis* on appeal will be denied.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup>Additionally, as plaintiff is aware, he has accumulated "three strikes" pursuant to 28 U.S.C. § 1915(g) by having three actions dismissed as frivolous, malicious and/or for failure to state a claim upon which relief may be granted. Thus, the Court cannot allow plaintiff leave to proceed *in forma pauperis* in an original action or on appeal unless he is in imminent danger of serious physical injury. There is no indication that

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed *in forma pauperis* on appeal [ECF No. 21] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff shall, within thirty (30) days of the date of this Order, either pay the \$505 appellate filing fee or file a motion in the United States Court of Appeals for the Eighth Circuit for leave to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that plaintiff shall file any future documents or pleadings in connection with his appeal directly with the United States Court of Appeals for the Eighth Circuit.

Dated this 19th day of April, 2022.

AUDREY G. FLEISSIG

UNITED STATES DISTRICT JUDGE

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plaintiff is in imminent danger, thus, he is not entitled to proceed *in forma pauperis*. *See Berry v. Cline*, No. 89-4146 (July 17, 1989); *Berry v. St. Louis Circuit Court*, No. 91-0248 (April 26, 1991); *Berry v. Mitchell*, No. 92-0071 (March 11, 1992). These cases were collected and mentioned in *Berry v. Schiro*, No. 00-4183 (W.D.Mo. November 6, 2000).